HAL H. MEMMOTT

IBLA 83-709 Decided December 9, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting color-of-title application U-51427.

Affirmed as modified.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application.

2. Color or Claim of Title: Generally--Color or Claim of Title: Adverse Possession

No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

3. Color or Claim of Title: Generally--Color or Claim of Title: Adverse Possession

A tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal and equitable.

4. Color or Claim of Title: Generally--Color or Claim of Title: Good Faith

In order to support a class 1 claim a claimant must establish that the land has been held in good faith and in peaceful adverse possession by the claimant,

> his ancestors or grantors under claim of title for more than 20 years. If the ancestor's possession is not in good faith, the chain has been broken, the holding period of the ancestor may not be tacked on and the statutory period begins anew.

APPEARANCES: Dexter L. Anderson, Esq., Fillmore, Utah, for appellant; David K. Grayson, Assistant Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for appellee, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Hal A. Memmott has appealed from a decision dated May 26, 1983, of the Utah State Office, Bureau of Land Management (BLM), rejecting his color-of-title application U-51427.

Appellant filed the application with BLM on July 13, 1982, pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976), for 80 acres of land situate in T. 15 S., R. 2 W., sec. 34, SW 1/4 NW 1/4, NW 1/4 SW 1/4, Salt Lake meridian, Utah. On the application, appellant stated that he was made aware of a conflict in title in May 1982 by the BLM area manager. As improvements, appellant listed an $800 fence and stated that 40 acres of the applied for tract had been cultivated in 1952. Appellant also filed a tax levy and payment record for the years 1919 through 1981. Appellant submitted the following deeds:

> Quit Claim Deed dated February 21, 1944 from Juab County to Samuel F. Memmott; Warranty Deed dated April 16, 1969 from Samuel Fenton Memmott and Ida Memmott his wife to LeVoy Memmott and Ela Memmott his wife and Afton Memmott and Merle Memmott his wife; Warranty Deed dated June 24, 1982 from Afton Memmott (widower) to Hal A. Memmott and Doris L. Memmott his wife.

The decision by BLM, based on a land report, rejected the application both as a class 1 and a class 2 claim. BLM concluded that there was no evidence of cultivation and did not consider an old fence along one side of the tract a valuable improvement. BLM found that the claim did not qualify as a claim of class 2 because appellant's title and tax information only went back to 1919. Citing the land report, the decision also stated that there existed a question concerning appellant's good faith. The land report, dated April 29, 1983, states in part as follows:

> The BLM has no evidence that the U.S. Government ever issued a patent to this land and it is presently shown on the BLM title plats as public land. The Juab County Recorder's office shows a chain of title on the subject land that begins spontaneously in 1919 with a W. F. Memmott as the owner. The county records show no instrument indicating any type of title, conveyance from federal ownership. The chain of title follows from W. F. Memmott in 1919 to Hal Memmott at the present.

> The subject tract of land has been included within private lands owned by Mr. Memmott and the former owners (his parents and grandfather [sic]) and used in their livestock operation as if it was their own. This unintentional trespass went unnoticed by the BLM until June 1, 1982. On this day BLM engineering technicians were laying out a fence line for a fence building contractor who was rebuilding a BLM fence. The fence was being replaced because most of it had been burned down by a range fire that had swept over the entire area on July 25-28, 1981. The land ownership pattern had been transferred from the BLM title plats in the office to field maps, which were used to locate where the new fence would be built.
>
> When the field crew reached the subject 80 acre tract the records were double checked and the decision made to deviate from where the old cedar post fence had gone, and fence around the subject tract. Doing this fenced the tract out of Mr. Memmott's private land, and included it within the rest of the public lands. Mr. Memmott, seeing this take place on the ground, immediately complained and apparently became aware for the first time that he did not own the subject tract.

In the statement of reasons appellant asserts he did not know there was a problem with the title until BLM fenced off the 80 acres after the range fire.

Appellant states he was a partner in the ranching operation and in possession of the property for 20 years prior to the June 1982 deed. Appellant alleges that about one-half of the tract has been cultivated but concedes that the rest is hilly grazing terrain unsuitable for cultivation. Appellant also acknowledges that he is unable to show ownership or tax records prior to 1919.

In support of his appeal appellant filed an affidavit attesting to matters within his personal knowledge. In paragraph 15 of the affidavit appellant states, in part:

> The [1982] conveyance by warranty deed was merely a formality, and was not a transaction conveying the property to me as a stranger who knew that it did not belong to the Grantor, but rather belonged to the BLM, or with knowledge that the BLM claimed some interest in it.

In paragraph 20 of the affidavit appellant states:

> In addition to the written record referred to herein, there is a legend of title existing within my family members as follows: SAMUEL FENTON MEMMOT owned property in the Juab County area, which was isolated from other portions of property, and was therefore of not much value to him. He was able to negotiate a trade with the BLM at that time for the trade of his isolated piece of property for the property in question. That trade took place at least verbally between him and the BLM authorities at the time. This was done to block up the 480-acre piece of property

discussed above by the addition of the 80 acres. Apparently, paperwork on the transaction did not take place probably through oversight on someone's part, or as a result of changing administration or procedures.

Class 1 and class 2 color-of-title claims are described in 43 CFR 2540.0-5(b) as follows:

> (b) The claims recognized by the act will be referred to in this part as claims of class 1, and claims of class 2. A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local government units.

[1] An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1975); Homer W. Mannix, 63 I.D. 249 (1956). The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application. See Lester and Betty Stephens, 58 IBLA 14 (1981).

[2, 3] BLM correctly determined that appellant had no valid class 2 claim, because such a claim must have been initiated no later that January 1, 1901. 43 CFR 2540.0-5(b); Estate of John C. Brinton, 71 IBLA 160 (1983). A color-of-title claim requires peaceful adverse possession in good faith by a claimant or the claimant's predecessors in interest under claim or color of title for the prescribed period of time. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors in interest. Carmine M. Warren, 69 IBLA 347 (1982). The first document of conveyance submitted by appellant was a conveyance to the County in 1928 which was the result of failure to pay taxes. This conveyance cannot be used to establish a color of title, however, as a tax deed extinguishes the former title to the land and initiates new title. Tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal and equitable. See Wood v. Mayo, 121 So.2d 503 (La. 1960); Harrison v. Everett, 308 P.2d 216 (Colo. 1957); Greene v. Esquibel, 272 P.2d 330 (N.M. 1954); Estate of John C. Brinton, 25 IBLA 283 (1976); Eustayce and Goldie Leonard, A-30573 (Aug. 3, 1966). We conclude that the first document which could be used by appellant as the basis for the color-of-title claim was the deed from the county to Samuel F. Memmott, dated February 21, 1944. Appellant clearly does not have a class 2 color-of-title claim.

[4] An analysis of the chain of title is relevant to the analysis of appellant's claim to the property. In 1919 the property was placed on the Juab County tax rolls and W. F. Memmott paid taxes on the property from that time until 1924. Between 1924 and 1928 no taxes were paid, and, as a result, an "Auditors Tax Deed" was executed, transferring the property to Juab County for nonpayment of taxes. The "title" remained in Juab County until the property was purchased from the county by Samuel F. Memmott (a.k.a. Samuel Fenton Memmott) on February 21, 1944. Samuel F. Memmott retained title until April 16, 1969, at which time the property was transferred to Afton Memmott and Merle Memmott, appellant's parents. On June 24, 1982, the property was transferred to the appellant. As stated above, the first document that can be used to support the color-of-title claim is the February 21, 1944, tax deed to Samuel F. Memmott. Acquiring title to public lands by tax deed from a local taxing authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. Estate of John C. Brinton, 71 IBLA at 163.

In order to support a class 1 claim a claimant must establish that the public land in question has been held in good faith and in peaceful adverse possession by the claimant, his ancestors, or grantors under claim of title for more than 20 years. Carmen M. Warren, 69 IBLA 347 (1982). In order for appellant to establish the color of title for the requisite 20-year period appellant must "chain" the title through to the owner of the land 20 years prior to the date that notice was received that the land was owned by the Federal Government and not by him. Therefore, the requisite good faith ownership without notice must be shown on the part of Samuel F. Memmott and all subsequent owners. Good faith requires that a claimant and his predecessors honestly believe that they were invested with title. In determining whether the claimant honestly believed that he was seised with title, the Department may consider whether such belief was unreasonable in the light of the facts then actually known to him. Carmen M. Warren, supra; Lawrence E. Willmorth, 64 IBLA 159 (1982). Knowledge of Federal ownership of the land in question negates the requisite good faith. 43 CFR 2540.0-5(b); United States v. Wharton, 514 F.2d 406 (9th Cir. 1975); Day v. Hickel, 481 F.2d 473 (9th Cir. 1973).

The affidavit filed by appellant in support of his claim acknowledges that Samuel F. Memmott had negotiated a land exchange with BLM. This trade involved the exchange of a tract of land in Juab County "isolated from other portions of the property" for "the property in question." If this is the case, Samuel F. Memmott was aware of the fact that the property was owned by the Federal Government and not owned by him pursuant to the deed received by him in 1944. The possession of ancestors of the grantor may be tacked on to satisfy the statutory period; however, if the ancestor's possession is not in good faith, the chain has been broken, and the holding period of the ancestor may not be tacked on, and the statutory period begins anew. Joe I. and Celina V. Sanchez, 32 IBLA 228 (1977).

Appellant has submitted sufficient evidence to conclude that Samuel F. Memmott knew or had reason to know that there was a defect in the title to his property. This being the case, appellant has, at the most, demonstrated a good faith belief since 1969. Since this period is less than 20 years, appellant has failed to demonstrate that he has met the statutory conditions for purchase under the Color of Title Act.

Because of our conclusion as to lack of good faith possession for more than 20 years, we do not find it necessary to discuss whether appellant satisfied other statutory requirements.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, as modified by this opinion.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge
Alternate Member

C. Randall Grant, Jr.
Administrative Judge